

**Testimony of Ann Jordan,  
Director, Initiative Against Trafficking in Persons, Global Rights  
Before the  
House Subcommittee on Border, Maritime and Global Counterterrorism**

March 20, 2007

Thank you, Madam Chair. I am honored to participate in today's hearing and to speak about human trafficking, six years after the passage of the Victims of Trafficking and Violence Protection Act of 2000.

My organization, Global Rights, is an international human rights organization operating in the United States and numerous countries around the world. We work with local partners and activists to challenge injustice and to amplify new voices in national and international fora. We believe that real change occurs from the ground up and so we and our partners typically work with the most disadvantaged and marginalized members of society, including people who have been trafficked and who are vulnerable to trafficking, as well as other human rights abuses.

In my brief time, I would like to discuss three issues that are of great concern to my organization, as well as other organizations:

1. The problematic consequences that arise from the U.S. government conflating trafficking with prostitution;
2. The gaps in the federal trafficking legislation with regard to the special status of trafficked children; and
3. The need for broader relief and a quicker process for granting victims and their family members immigration relief.

**I. THE U.S. MUST MAINTAIN THE ANTI-TRAFFICKING FOCUS ON THE 13TH AMENDMENT PROHIBITION ON SLAVERY AND INVOLUNTARY SERVITUDE.**

**Current federal law enables prosecutions of all enslavers and provides protection for all victims.**

The 2000 Victims of Trafficking and Violence Protection Act defines traffickers as people who use force, fraud or coercion to hold adults or children in forced labor, slavery, involuntary servitude or debt bondage or to cause adults to perform commercial sex acts. It further defines trafficking as causing a minor to engage in commercial sex acts, with or without force, fraud or coercion. Thus, the federal law ensures that all victims of trafficking into homes, brothels, fields, streets and factories are recognized and that all traffickers and enslavers are subject to federal prosecution. It recognizes that traffickers are equal opportunity enslavers who are more than willing to treat human beings, including children, as chattel in violation of the 13<sup>th</sup> Amendment prohibition on slavery and involuntary servitude.

From 2001 through 2005, 298 defendants have been charged with trafficking offenses and 140 have been convicted as of the end of 2005.<sup>1</sup> Among those convicted were the enslavers of a 10 year old Egyptian girl in Orange County, California, who was held in a dark, unventilated garage, forced to take care of the

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<sup>1</sup> Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons, FY 2005, p. 16.

house and 5 children, deprived of an education and subjected to emotional and physical abuse.<sup>2</sup> Also convicted were the traffickers the largest case to date, that of 275 women and men from Vietnam and China who were held in American Samoa in forced labor, and subjected to threats, serious physical assaults, inadequate nourishment, rapes, and an endless cycle of debts, all of which were enforced by security guards.<sup>3</sup>

The law has also provided benefits and services to 841 victims from 2001 to 2005. While certainly more resources would increase the number of cases uncovered and prosecuted and victims served, the law remains, nonetheless, an excellent roadmap for further expansion and deserves our support.

**However, this broad framework is being eroded by a U.S. campaign that equates prostitution with trafficking and is redirecting resources to end prostitution rather than to end trafficking.** This anti-prostitution focus is affecting delivery of services to victims and we are concerned that federal investigators and prosecutors could be assigned to non-trafficking prostitution cases instead of 13th Amendment trafficking, slavery, forced labor and involuntary servitude cases.

Over the last six years, the broad scope of the U.S. anti-trafficking policy has been gradually narrowed to fit an anti-prostitution agenda that is based on the unproven belief that all prostitution (even legal prostitution in Nevada) is trafficking, and so criminalizing prostitution, as well as clients, is promoted as a purported means to stop prostitution and to stop trafficking for prostitution. This approach assumes that, once all men who buy sex are in prison, all women in prostitution will magically disappear and find other means of support. It also ignores the reality that prostitution is illegal in almost the entire United States and that clients, brothel owners and pimps are arrested by the thousands each year, yet prostitution and trafficking into forced prostitution continues. Obviously, the law enforcement approach has had little impact upon the underlying factors that lead to prostitution and that enable traffickers to force people into prostitution (and other sectors).

This anti-prostitution approach is reflected in policies and laws that have produced negative, but not unexpected, consequences. The major vehicle for enforcing this approach upon the non-governmental sector is a 2003 amendment to the TVPA that restricts funding to organizations that adopt a policy stating that they do not ‘promote, support or advocate for the legalization or practice of prostitution’.<sup>4</sup> Organizations must pledge not to use U.S. government funding and even non-U.S. government funding in any way that the U.S. might decide violates the prohibition. At first blush, this might appear to be a reasonable requirement because organizations set up to help trafficking victims (even those refusing to adopt such a policy) do not promote prostitution. Nonetheless, the law is highly problematic at many levels.

***The anti-prostitution ‘gag rule’ deprives grantees of the First Amendment right to freedom of speech.*** It forces U.S. grantees to relinquish their First Amendment right and forces non-U.S. grantees to relinquish their internationally-recognized right of freedom of speech and thought, including the right to debate, analyze and speak out freely, even about the question of a relationship between legalization of prostitution and human trafficking. The trafficking ‘gag rule’ only permits debate, research or discussion on the relationship between criminalization of prostitution and trafficking. Thus, university grantees cannot hold conferences in which legalization is discussed and grantees cannot attend such conferences, write about the impact of criminalization on women in prostitution or trafficking, or engage in activities that may be perceived by the US as ‘promoting, supporting or advocating’ legalization of prostitution.

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<sup>2</sup> United States v. Ibrahim and Motelib (2/2/05) (C.D. Cal.)

<sup>3</sup> United States v. Kil Soo Lee et al. (D. Hawaii)

<sup>4</sup> Trafficking Victims Protection Reauthorization Act of 2003, PL 108-193.

One grantee, out of fear of losing funding, prevented a prominent, highly-respected expert from attending an international workshop in which participants discussed trafficking, prostitution, labor, migration and the U.S. gag rule. Also, many organizations have purged prohibited words such as ‘sex work’ and ‘harm reduction’ from their materials and websites because they know that U.S. officials are scanning websites in search of prohibited words, alleged by U.S. officials to be evidence of ‘promoting’ prostitution. Obviously, the gag rule is cutting off the ‘free flow of ideas’ needed to develop sound and effective evidence-based policies on human trafficking and prostitution, which both affect the lives of millions of people around the world.

***The gag rule is also causing organizations to restrict activities for fear of losing U.S. funding.*** The terms ‘promote, support or advocate’ are vague and, in my research with organizations in 6 countries<sup>5</sup>, not one US government official has been able to explain to anyone what these words mean. In many countries, the U.S. is one of the main donors on trafficking, which is causing some foreign NGOs to stop working with people in the sex sector or collaborating with NGOs working with sex workers.

Despite the lack of guidance on what violates the gag rule, we do know that organizations cannot receive U.S. funding if they support of the rights of persons in the sex sector or support sex worker collectives, even if the women are simply asking for legal protections from police and client violence, education for their children, 100% condom usage, support to keep children out of prostitution and rescue trafficking victims, as well as the panoply of rights that non-sex workers take for granted. We have a report of a grantee that stopped allowing a collective of sex workers to use its premises for meetings apparently out of concern that the presence of sex workers on the premises talking about their work and their rights would threaten the organization’s U.S. funding. We do not believe the U.S. should be using its considerable resources and power to undermine the ability of any people, even those in the sex sector, from seeking their basic rights.

***The gag rule leads to qualified NGOs rejecting US funding.*** My research also reveals that the anti-prostitution gag rule is causing effective and respected organizations to cease applying for US funding because they are not willing to make any statements or take a position that could jeopardize their relationships with, or further stigmatize, the women with whom they work. They prefer to remain grounded in the reality of their countries and refuse to accept money to promote a policy that they know is counterproductive and ineffective in reducing prostitution or trafficking in their own countries.

***The anti-prostitution language contributes to the stigma suffered by persons in the sex sector.*** People working in the sex sector are subjected to discrimination, exclusion and social condemnation. When a woman is trafficked into the sex sector, she is subjected to the same type of treatment from society and even family members and so her contact with service providers must be non-judgmental, non-reformist and compassionate. Since U.S. funded service providers must now declare their opposition to the industry into which many women are trafficked, those service providers cannot say or do anything that might remove the stigma of prostitution from the victim, since that could be interpreted as ‘supporting’ prostitution. Partner organizations that work extensively with people in the sex sector, including trafficked women, report that, if a woman feels any negativity coming from the service provider she is highly likely to walk out and stop receiving much-needed services, and also not cooperate with law enforcement.

Furthermore, victims who do not feel comfortable with their service providers may find their only way to make a living is to return to prostitution as a quick means to support themselves and their families back home, and perhaps to pay off the debt incurred by them and their family members for migrating. If they feel that non-judgmental support is unavailable, they may decide to simply disappear into the

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<sup>5</sup> United States, Russia, Poland, Moldova, Nepal and Thailand.

underground economy, even into prostitution, rather than submit to demoralizing treatment by service providers who have signed the anti-prostitution gag rule.

One Asian organization reports that U.S. influence on its government and funders is creating divisions and increasing the stigma against people in prostitution. The U.S. is promoting an anti-prostitution agenda in many countries under the banner of ‘anti-trafficking’ and, in some places, it is dividing the anti-trafficking community and demonizing the very sex workers who are working to stop child prostitution and trafficking into prostitution. The U.S.-led campaign against prostitution is also indirectly giving permission to governments to crack down on women in prostitution and to harass women migrants suspected of being prostitutes. It is also undermining efforts to create a regional network of sexworkers that could collaborate on health, HIV/AIDs, rights, anti-trafficking and other issues.

These negative consequences would be removed if grantees were no longer required to give up their First Amendment right to use their non-U.S. government resources to work with all persons in need of their care, to speak out against injustice and to engage in research and to debate all of the causes and consequences of trafficking, including an exploration of the possible impact of legalization, as well as the criminalization, of prostitution on trafficking.

**A second manifestation of the anti-prostitution campaign encroachment upon anti-trafficking work is a section of the 2005 Trafficking Victims Protection Reauthorization Act<sup>6</sup> that focuses resources on non-trafficking anti-prostitution activities.** We are concerned that these provisions could be used to divert federal funding, investigators and prosecutors to concentrate on non-trafficking prostitution cases. As mentioned previously, the definition of trafficking requires the use of force, fraud or coercion except in cases involving minors caused to engage in ‘commercial sex acts.’ Trafficking falls under the 13th Amendment prohibition of slavery and involuntary servitude, all of which negate the free will of the individual and constitute grievous human rights abuses. The law covers all trafficking of persons in the United States into homes, brothels, factories, streets and farms. It also covers trafficking of foreign nationals and U.S. citizens and trafficking into and within the United States. It does not cover prostitution (or farm work, domestic work or factory work) unless the above conditions are met.

However, the 2005 Reauthorization Act lays the groundwork for federal investigator and prosecutor involvement in non-trafficking prostitution cases as well as diverting trafficking funding to non-trafficking prostitution cases. It calls for research on “sex trafficking,” which includes prostitution as well as trafficking into prostitution.<sup>7</sup> It also establishes a grant program for state and local law enforcement to carry out anti-prostitution activities. We are concerned that this law could divert scarce and badly-needed anti-trafficking resources to non-trafficking prostitution activities.

We do believe there is a large role for the federal government to play in addressing the harms of prostitution and the causes leading youth and adults to enter into prostitution in the first place and preventing them from exiting. Too little is done and too little compassion is evident in our society’s current zeal to lock up sex workers and its willingness to ignore the plight of these vulnerable and marginalized members of our society. The federal government could provide much-needed compassionate and supportive funding for treatment, services and prevention programs. However, the funds for such work should not reduce the resources or the investigatorial or prosecutorial manpower needed to find and prosecute trafficking enslavers and to protect their victims.

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<sup>6</sup> Sections 201-207.

<sup>7</sup> Sex trafficking“ means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.” 22 USC 7102(9).

Shifting money and federal staff to non-trafficking prostitution activities would be a bad outcome on several counts. First and most importantly, such a focus could undermine and weaken the ability of the newly-created and highly-specialized Justice Department Trafficking Unit and the 32 plus specialized trafficking task forces<sup>8</sup> to carry out their mandates. The task forces are elite units of experts whose job is to prosecute 13<sup>th</sup> Amendment violations involving enslavement of extremely vulnerable people on U.S. soil. Without adequate dedicated resources for slavery, trafficking and forced labor cases, it would be highly likely that children like the girl held in involuntary servitude in Orange County and forced laborers like the 275 workers held in American Samoa would not be rescued and their traffickers would not be prosecuted as resources would be focused on prostitution-related crimes. Traffickers would be free to operate with impunity.

Second, although earning money off of prostitution is a crime in most of the United States, it is not a violation of the 13<sup>th</sup> Amendment unless trafficking, slavery, involuntary servitude or forced labor is involved. Federal resources must continue to be deployed to stop the ‘worst of the worst’ predators - the trafficking enslavers. Third, prostitution is, in the majority of cases, a state-level offence, and tens of thousands of pimps, brothel owners and clients are prosecuted by local jurisdictions each year. Federal law enforcement intervention simply is not warranted without a request from local officials and federal resources would simply be wasted in duplicating the efforts of local law enforcement officials. Fourth, prostitution cases that could be handled by state courts would clog federal courts. Fifth, prosecutors would have to find a federal link to the crime, which is not necessary at the state level, certainly making it more difficult to achieve federal convictions.

It is important to ensure that resources - financial and otherwise - for *trafficking* are adequate and not shifted in any way for *non-trafficking prostitution* cases. If members of Congress wish to fight 13<sup>th</sup> Amendment crimes as well as seek solutions to the problem of prostitution, then it has the power to authorize separate resources for both. Funding for trafficking and anti-prostitution investigations, prosecutions and services and support should be kept separate and trafficking funds should not be considered fungible resources for combating prostitution.

## **2. THE 2000 VTVPA DOES NOT FULLY TAKE INTO ACCOUNT THE SPECIAL NEEDS OF TRAFFICKED CHILDREN.<sup>9</sup>**

The needs and special circumstances of children<sup>10</sup> were not sufficiently considered in drafting the 2000 TVPA. Although the 2003 and 2005 Reauthorization bills contained some provisions for trafficked children, systematic solutions must be enacted to address the numerous issues that service providers, attorneys and trafficked children confront when they negotiate the legal system. Among the many concerns of service providers discussed below, the first issue is the most in need of urgent attention.

**Unaccompanied children are languishing in inappropriate housing and HHS should be empowered to transfer them quickly into the Unaccompanied Refugee Minors program.** Congress recognized that minor victims of a severe form of trafficking should not be compelled to speak with law enforcement in order to receive visas, protections and services and so minor victims do not need the T visa requirement to “comply with a reasonable request of law enforcement.” Accompanied minors, who live with family members or guardians, are able receive a T visa and benefits without having to speak with law

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<sup>8</sup> Established by the Departments of Justice, Health and Human Services, Homeland Security, Labor and State, as well as NGOs.

<sup>9</sup> I would like to thank Melanie Orhant at Break the Chain Campaign for contributing extensively to this section.

<sup>10</sup> For the purposes of this paper, the children are non-U.S. citizens or Legal Permanent Residents.

enforcement. Once they obtain their T visa, the Office of Refugee and Resettlement (ORR) issues a Letter of Eligibility that enables them to receive benefits on par with refugees.

However, unaccompanied children are not so lucky. They have no guardian or parent or any supervised living situation and so they need long-term placement and care in the Unaccompanied Refugee Minors (URM) program.<sup>11</sup> Children who are detained by Immigration are placed in the Division of Unaccompanied Children Services (DUCS) program, which is funded and monitored by ORR. Trafficked children in the temporary DUCS detention and other unaccompanied trafficked minors need to be moved into the long-term URM foster care program.

In order to get into the URM program, ORR must issue a Letter of Eligibility for the child. According to the Interagency Memorandum of Understanding between the Departments of Health and Human Services, Homeland Security and Justice signed in 2004, minors will receive a Letter of Eligibility only after Justice or Homeland Security determines that the minor “has been subjected to a severe form of trafficking in persons.”<sup>12</sup> The determination is made after an interview by Justice or Homeland Security with the unaccompanied child, which effectively negates the protections Congress included in the 2000 TVPA to protect minors from the stress of such interviews. Unaccompanied minors are forced to meet the same requirement as adults to cooperate with law enforcement.

Unaccompanied minors who are unwilling to speak with law enforcement are pushed into a legal limbo in which they can either try to fend for themselves or being held as a ‘material witness’ and being forced to testify. In some cases, it could result in the child being faced with possible deportation.

**Example:** A trafficked child was placed in removal proceedings and sent to the DUCS program. Her attorney informed her of her options – to speak with law enforcement or forego services – and she decided not to talk to law enforcement. As a result, she was sent back to her home country where she had nobody to take care of her and had no social support.

Despite the fact that a large percentage of trafficking victims are children, only 34 letters granting eligibility for benefits to child trafficking victims were issued in FY2005, partly due to this mandatory requirement for minors to cooperate with law enforcement. This entire process and this result runs contrary to the intent of Congress.

Members of Congress have called upon HHS to rescind the practice of requiring children to cooperate with law enforcement in order to receive letters of eligibility.<sup>13</sup> “By providing benefits and services to child victims as soon as they are identified, HHS will be in the best position to protect children and provide a safe and stable environment. Whether a child ultimately decides to serve as a witness in the prosecution of his traffickers is a decision the child can make after his situation has been stabilized.” The response of Michael O. Leavitt, Director of HHS, was failed to address Members’ concerns and simply reiterated existing policy to refer to Justice and Homeland Security.<sup>14</sup> He also stated “that HHS will [not] accept unreasonable delays in the enrollment of the juvenile or that the juvenile...”

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<sup>11</sup> Funded and monitored by ORR and administered by Lutheran Immigration and Refugee Service (LIRS) and U.S. Conference of Catholic Bishops (USCCB).

<sup>12</sup> See attached Memorandum of Understanding.

<sup>13</sup> See attached letter to Secretary O. Leavitt, U.S. Department of Health and Human Services dated July 26, 2005 from Senator Sam Brownback, Congressman Frank R. Wolf, Congressman Joseph H. Pitts, Congressman Christopher H. Smith, and Congressman Tom Lantos.

<sup>14</sup> See attached letter of Michael O. Leavitt dated September 23, 2005.

From the child's perspective, what is a "reasonable" delay when it comes to living in an unstable situation, living in a DUCS facility, not receiving treatment for the serious trauma of trafficking and not receiving dental or medical care? Is it reasonable for a child to wait a day? a week? two months?

**Example:** An unaccompanied child is a victim of horrible case of trafficking in which she was beaten, abused, denied access to medical care, school, sleep and food and generally treated like a slave. Her attorney submits information to Justice and, after making numerous phone calls, an interview is finally arranged a month later. In the meantime, the child is living in very precarious living arrangements, in the basement of a house, is not attending school, has very little money, and is not being looked after by a responsible adult. Several weeks later, Justice finally tells ORR to issue a Letter of Eligibility, which allows the girl to enter the URM program. Ironically, officials treated this as a "fast" case because the child was on the verge of "aging" out, meaning she was going to turn 18 soon and be ineligible for the URM program. Given the conditions under which this child was living, almost two months is certainly not 'fast'.

Furthermore, HHS claims it does not allow Justice or Homeland Security to veto cases, but a veto is unnecessary since HHS relies upon the decision of Justice or Homeland Security. Thus, each time neither agency interviews an unaccompanied minor, they are 'vetoing' the case and each time they delay an interview, they are at least temporarily 'vetoing' a case. This result is not and was not the intent of Congress. Unless Congress steps in, minor victims of trafficking will continue to be denied their right to a safe living environment and immediate assistance.

An easy solution to the anomalous status of trafficked minors would be to empower HHS with exclusive authority and responsibility to make prompt determinations that a child is a victim of a severe form of trafficking. HHS would then be able to move children swiftly into the URM program where they can receive necessary emergency assistance such as medical care, relocation, family reunification, and mental health care.

One proposed solution for members to consider is contained in HR 270, which was introduced by Congressmen Smith and Wolf, in which they propose that HHS is to have exclusive jurisdiction for determining whether or not a child is a victim of trafficking.<sup>15</sup>

**Trafficked children should not be interrogated unless and until they are assessed to be stable and competent.** Trafficked children are often picked up in raids and immediately interrogated by law enforcement officials who have no understanding of the fragile state of the trafficked child. Congress has determined that trafficked children should be spared the trauma of working with law enforcement in order to receive immigration relief and services. Similarly, children who have been psychologically and physically abused, even raped, should not be interrogated unless the Department of Health and Human Services has made an independent finding based upon an expert opinion that the child's mental and physical health is stable and that the child is competent and capable to participate as a witness in such efforts.

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<sup>15</sup> Amending 22 U.S.C. 7105(b)(1) by adding: (i) DETERMINATION- With respect to a person referred to in subparagraph (C)(ii)(I) who is seeking assistance under this paragraph, if credible evidence is presented on behalf of the person that the person has been subjected to an act or practice described in section 103(8), the Secretary of Health and Human Services shall promptly make a determination of the person's eligibility for assistance under this paragraph.

**Once minor children are identified as victims, their derivatives (family members) should receive parole, humanitarian assistance, or continued presence derivative status, whichever is appropriate.**

Under current law, parents, unmarried siblings under 18, spouse and children of a T visa holder under 21 (when filing the T visa application) may apply for a derivative T visa. However, many children do not receive a T visa for years and so they are separated from their family members for long periods of time, while they undergo very stressful circumstances, particularly if they are involved in an ongoing criminal litigation. Many children are forced to choose between returning home to be reunited with family members or pursuing criminal and civil sanctions against their traffickers. This is not a choice that a child should have to make.

Family members are also often at risk of violence from the traffickers back home. The trafficking law requires the government to “protect trafficked persons and their family members from intimidation and threats of reprisals and reprisals from traffickers and their associates.”<sup>16</sup>

**Example #1:** The parents of an unaccompanied child in the URM program want to come to the U.S. because the organized criminal group that trafficked the child to the U.S. has threatened them in phone calls and visits warning them that their child should not testify.

**Example #2:** An unaccompanied child was picked up in a raid and has been working with law enforcement. She has been diagnosed a severe illness. The trafficker is threatening the child to harm her mother if she doesn't pay off the debt. Additionally, the mother and brother are being directly threatened in the home country. This child's mother and eligible siblings should be allowed into the country prior to her T visa being approved.

Victims are much more able to recover from their experiences and to participate in investigations and prosecutions with the active support of their families and in the knowledge that their family members are safe from these types of threats, which are often acted upon to silence a witness.

**Interviews with children in the DUCS program should be maintained in confidence by ORR.**

According to Amnesty International 5,385 minors were in immigration custody in 2001<sup>17</sup> and Lutheran Immigration Refugee Services reports that more than 7,000 undocumented children are presently in immigration custody<sup>18</sup>. Under the TVPA, victims of a severe form of trafficking who are in federal custody shall not, to the extent possible, be detained in facilities inappropriate to their status as crime victims. It follows, then, that trafficked children should be identified as such and then placed in a suitable facility.

Currently, there is no requirement that children entering the DUCS program be screened for trafficking. Nonetheless, the DUCS program is conducting a trafficking screening and, if a potential trafficking case is identified, these children are being referred for an in-depth intake called the “Trafficking Addendum.” We applaud the DUCS program for this screening but are concerned with the use of the collected information. The Trafficking Addenda are submitted to ORR, which turns them over to Homeland Security. By turning over the Addenda to Homeland Security, ORR is violating the right of children not submit to an interview with law enforcement. In essence, the DUCS interview becomes a law

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<sup>16</sup> 22 USC 7105(c)(3)

<sup>17</sup> "Why am I here? Children in Immigration Detention," Amnesty International, [http://www.amnestyusa.org/refugee/pdfs/children\\_detention.pdf](http://www.amnestyusa.org/refugee/pdfs/children_detention.pdf)

<sup>18</sup> The Division of Unaccompanied Children's Services (DUCS), <http://www.lirs.org/InfoRes/faq/DUCS.html>

enforcement interview that is carried out without the child's knowledge or consent, the presence of an attorney, a *guardian ad litem*, or even a basic understanding of how the information was to be used.

Children should be screened in the DUCS program as potential trafficking victims *without* having to submit to a *de facto* law enforcement interview. However, Homeland Security, with the participation and acquiescence of ORR, cannot be allowed to make an end run around the clear intent of Congress to protect children from being retraumatized and revictimized interviewing them without their permission, since the interview could lead to the forced participation of the child in a criminal case.

We call on Congress to correct this situation and ensure that the information collected is kept confidential and not turned over to law enforcement.

### **3. VICTIMS AND THEIR FAMILY MEMBERS NEED A QUICKER MEANS TO OBTAIN IMMIGRATION RELIEF.<sup>19</sup>**

**The process for granting Continued Presence immigration relief is exceedingly slow and harmful to victim recovery.** Continued Presence (CP) provides temporary non-immigrant status and allows holders to receive an Employment Authorization Document (EAD) and access to refugee benefits. It is a quick way to solve a trafficked person's immigration issue until a T visa is eventually granted (or denied). Federal law enforcement officials may apply for CP but CP requests are processed by Immigration and Custom Enforcement (ICE). In the past, ICE was able to process these applications quickly. However, in the last year, victims of trafficking and law enforcement have been facing delays in the processing of CP applications by ICE. Delays with ICE have caused victims of trafficking to wait months for CP.

Delays by ICE cause trafficked persons numerous problems. The most egregious is the months the individual must live without an EAD, legal immigration status and access to benefits. Even when victims have come forward to work with law enforcement, CP is often, for whatever reason, delayed for an unreasonable amount of time. When trafficking victims have to wait months with no immigration relief or ability to work in sight, some decide to disappear and abandon the investigation, because they believe they will be better off working illegally than remaining indefinitely in legal limbo without the ability to support themselves and often their families back home.

Without CP and an EAD, victims are unable to rebuild their lives. They are unable to work, lack access to medical care, are separated from their family members for long periods of time, and live in increased fear for themselves and their family members back in the home country, to name just a few of the problems endured by victims without CP.<sup>20</sup> This immigration benefit was intended to be a quick solution to keep victims of trafficking temporarily safe in the US while they worked with law enforcement to investigate and prosecute their traffickers. Trafficking victims should not have to wait months for temporary revocable immigration relief.

Thus, we believe that CP should be mandatory if law enforcement opens a trafficking or related case. If evidence shows that it is highly likely a person has been trafficked, and even if a lesser crime is eventually charged, CP should be mandatory and applications for CP should be processed within 30 days.

**CP derivative status should be granted immediately to family members of trafficking victims who are in the U.S.** Derivatives in the United States currently do not have access to parole or work

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<sup>19</sup> I would like to thank Melynda Barnhart, Director, Anti-Trafficking Initiatives, International Rescue Committee for contributing extensively to this section.

<sup>20</sup> A related issue we would like to highlight is the need for increased funding for ICE to pursue trafficking investigations.

authorization based on a grant of CP to the potential victim-witness. CP derivative status is not available and so family members in the U.S. can be out of status until they receive a derivative T visa, possibly years after the victim receives CP. As a result, family members are unprotected from removal and could be separated from their children, including trafficked children. They do not have access to a work-permit or public benefits until a T Visa has been filed and derivative status has been granted.

In many states, derivatives without proof of an immigration status are unable to obtain a driver's license or state issued identification. Moreover, if it is necessary to relocate the victim and his/her family members because of safety concerns, then all family members need some form of valid and current identification to travel. In many cases, victims are not able to obtain employment immediately or for many months after captivity because of physical and psychological trauma or because they are minors.. With CP, family members in the country could provide much-needed financial support to the victim until she or he is able to enter the workforce.

**Family members of CP recipients should be paroled into the U.S. under a derivative status.** The risk of harm to family members is always present in the victim-witness' mind. In order to ease the victim's concerns and facilitate collaboration, family members outside of the United States should be paroled under CP derivative status immediately upon the issuance of CP to the victim. Not only does this guarantee that family members are secure, as required by 22 USC 7105(c)(3), but also provides family support for victims, especially those who are minors. An exception should be carved out to ensure that family members who were involved in the trafficking scheme are not paroled in just as they are not admissible or eligible to obtain a T-visa.

Thank you, Madam Chair, for allowing me this opportunity to speak. I would be happy to answer any questions you or members of the Committee may have.